

STATE OF VERMONT BOARD OF MEDICAL PRACTICE

In re: Daniel S. Sax, M.D.

MPAH 166-0803

STIPULATION AND CONSENT ORDER

NOW COME Petitioner, the State of Vermont, by and through Attorney General William H. Sorrell and undersigned Assistant Attorney General, James S. Arisman, and Daniel S. Sax, M.D., Respondent, and state as follows:

1. Daniel S. Sax, M.D., (Respondent) holds Vermont Medical License Number 042-0006035, issued on August 26, 1977. Respondent practices in the field of neurology, formerly holding privileges at Gifford Medical Center. Dr. Sax also holds a Massachusetts medical license.
2. Jurisdiction vests in the Vermont Board of Medical Practice (Board) by virtue of 26 V.S.A. §§ 1353, 1354, 1355, 1356 & 1398 and 3 V.S.A. § 814(c).

I. Background.

3. The Vermont Board of Medical Practice opened this matter for investigation on or about August 26, 2003 following receipt of information raising concerns regarding Respondent's ability to practice medicine safely, due to personal health reasons. The hospital privileges of Respondent Sax had been suspended by Gifford Medical Center on or about August 25, 2003, to ensure patient safety and to facilitate Dr. Sax' care and treatment.

4. On August 27, 2003, pursuant to the State's motion, filed under 3 V.S.A. § 814(c), the Board of Medical Practice conducted a special hearing and entered summary suspension of Respondent's Vermont medical license. Since this date Respondent has not practiced medicine.

In the interim, Respondent has pursued necessary medical treatment and has cooperated fully with the Board. The State has not filed a specification of charges in this matter. Nor has Respondent requested issuance of a specification of charges or a further hearing by the Board.

II. Petition by Respondent.

5. On August 18, 2004, Respondent filed a petition requesting Board approval of his proposed return to the practice of medicine. Respondent indicated his willingness to accept such conditions of licensure as might be deemed necessary by the Board.

6. Respondent has received medical treatment since August 2003 and has been cared for by a number of providers. His current treating physician indicates that Respondent has engaged responsibly in treatment and has made appropriate progress. Respondent's physician contemplates continuation of this positive medical course, assuming Respondent continues his treatment and is supported by regular monitoring to ensure continued efficacy of Respondent's care.

7. Respondent's treating physician has stated that, at present, neither Respondent's diagnostic condition nor his projected course of treatment will interfere with his ability to practice medicine competently and safely, again assuming Respondent continues to follow treatment recommendations.

8. The undersigned Assistant Attorney General has conferred with Respondent's treating physician. The treating physician has reiterated his positive opinion, as above, and responded to questions regarding Respondent's ability to practice competently and safely. The treating physician has confirmed his opinion, as set forth in Paragraph 7, above.

9. Respondent has agreed to meet with the Board's ad hoc members with regard to his petition for return to practice, should this be deemed necessary by the members. Respondent understands and agrees that his requested return to the practice of medicine shall occur only if the

Board of Medical Practice, in its sole discretion, determines that (a) his medical needs have been appropriately addressed; (b) he has made reasonable and necessary progress in treatment; and (c) his prognosis indicates to a reasonable medical certainty that he will be able to practice competently and safely. Toward these ends, Respondent expressly has agreed to the conditions of licensure set forth below. These conditions will be imposed concurrently with any Board approval of his return to the practice of medicine.

10. Respondent understands that pursuant to this agreement, if approved, he will be issued a conditioned medical license. Such conditions shall require Board approval of his medical treatment and monitoring of his medical condition.

III. Agreement.

11. Respondent has knowingly determined that he shall enter into this agreement with the Vermont Board of Medical Practice, based on his current medical condition and the advice of his treating doctors. The parties agree that Respondent may return to the practice of medicine subject to his full and continuing compliance with all the terms and conditions set forth below. Respondent expressly agrees that his full, good faith cooperation with his treating physician(s) and all recommended medical care is required for his continued well-being and the sound treatment of his patients.

12. Respondent acknowledges that at all pertinent times he has had the right to be represented by counsel in this matter. Respondent agrees that he is knowingly and voluntarily entering into this agreement with the Board of Medical Practice. Respondent has personally reviewed this document and conferred with counsel regarding this agreement. Respondent is fully satisfied with the advice and counsel he has received. Respondent agrees to abide by the terms and conditions set forth below wherever he may practice medicine while this agreement is in force.

13. Respondent acknowledges and agrees that by executing this document he is waiving any right at this time to be served with formal charges, to challenge the jurisdiction and continuing jurisdiction of the Board in this matter, to be presented with any evidence against him, to cross-examine adverse witnesses, and to offer evidence of his own. 26 V.S.A. §§ 1355, 1356 & 1360.

14. Respondent recognizes the responsibility of the Vermont Board of Medical Practice to protect the health, safety, and welfare of patients. He agrees to continue his full cooperation with the Board in this matter and with regard to his care of patients.

15. Respondent agrees that the Vermont Board of Medical Practice may adopt Paragraphs 3 through 14, above, as its findings of fact and/or conclusions of law in this matter. He agrees that these paragraphs provide a sufficient basis for entry of this Stipulation and Consent Order by the Board of Medical Practice.

IV. Express Conditions of Licensure.

A. Continued Medical Treatment.

16. Respondent agrees that he shall remain in treatment with his current treating physician or another physician approved in advance by the Board during the life of this agreement. Respondent agrees that he shall continue to provide his full, good faith cooperation with such treatment and with all reasonable recommendations of his physicians. Respondent shall bear all costs of care and treatment, assessment and/or evaluation, and monitoring and reporting but shall be permitted to share such costs with third parties, subject to Board review and approval.

17. Should Respondent fail to fully cooperate with and follow all treatment reasonably prescribed by his treating physician(s), he agrees that the treating physician(s) may and shall notify immediately the Board of Medical Practice regarding this circumstance.

B. Evaluation and/or Treatment.

18. If directed by the Board, Respondent expressly agrees that (a) he shall undergo such assessment or evaluation of his condition and health as may be required by the Board prior to or following his return to the practice of medicine; and (b) he shall not practice medicine without the continuing agreement of his treating physician(s) and express approval in writing from the Board.

19. Respondent agrees to cooperate fully and in good faith with any Board-required evaluation or assessment of his medical needs. In this regard, Respondent agrees that no hearing or similar proceeding shall be required prior to any such request or order. However, should time permit, the Board will attempt to provide reasonable notice to Respondent and seek his voluntary cooperation in this regard. Respondent agrees that noncompliance with any such request or order from the Board shall be grounds for summary suspension of his medical license by the Board.

20. Respondent agrees that he shall execute any and all waivers that may be required for the Board, its staff, or agents to receive copies of any and all assessments, evaluations, diagnoses, records, or reports regarding his care and treatment and his medical condition. Concurrent with this agreement, Respondent agrees he shall sign as required a general authorization for the release of his medical records and information to the Board. Respondent agrees not to terminate such authorization and to execute such further authorizations for the release of his medical records and information as may be required by the Board. Consistent with this authorization Respondent also agrees that the Board or its agents may communicate orally to obtain information from any and all practitioners involved in his care and treatment. Respondent understands and agrees that his compliance with the terms and conditions herein and with the recommendations of those providing care and treatment to him may be considered in any proceeding before the Board regarding his license.

21. Should Respondent's treatment involve more than one physician, he agrees that each such physician may communicate freely with any other physician providing care and treatment to Respondent. Respondent agrees to execute any authorizations for release of his medical records that may be required for this purpose. Respondent agrees that the Board may (a) communicate freely and without limitation with each physician; and (b) obtain and review Respondent's treatment records in their entirety, upon request.

22. Written approval by the Board, its staff, or agents is required as to each treating professional caring for Respondent, including his primary care physician. Respondent shall petition the Board for this purpose. Respondent shall provide each treating professional with a copy of this Stipulation and Consent Order and such other documentation or information as may be requested by the treating professional.

23. The principal treating professional, who shall be specifically approved for this purpose by the Board, shall provide on a quarterly basis written reports to the Board regarding Respondent's involvement and progress in treatment. At least quarterly and upon request, the principal treating professional shall provide a written assessment expressly addressing whether or not Respondent appears to be able to practice medicine with reasonable care, skill, and safety, and that his practice of medicine is not inconsistent with his own medical needs. The Board shall designate the manner and form of all such reporting. The Board may designate other treating practitioner(s) who also shall provide reporting to the Board. Respondent shall bear the responsibility for making reasonable efforts to ensure that all such reporting takes place as required. After the passage of at least one year, Respondent may petition for modification of the reporting provisions of this paragraph. The Board in its sole discretion may approve or disapprove such a petition.

24. The Board shall be promptly notified in writing by both the principal treating professional and by Respondent if the treating professional has concluded that the frequency of or duration of treatment can be reduced. The treating professional must set forth in writing the observations that are deemed to support this conclusion. Respondent shall be required to present a written petition seeking Board approval of any such proposal. The frequency or duration of treatment shall not be reduced without the written approval of the Board.

25. Respondent agrees that all reasonable recommendations resulting from his treating professional(s), evaluations, and/or assessments as to his course of treatment shall be incorporated as additional terms and conditions of this Stipulation and Consent Order. Respondent expressly agrees that he shall fully and in good faith comply with all such reasonable recommendations. The Board in its sole discretion shall determine Respondent's compliance with this requirement.

26. Evaluative reports and/or assessments or therapist reports, as described above, which are supplied to the Board pursuant to this Stipulation and Consent Order shall be treated as protected by the patient-physician privilege, treated as confidential, and shall not be subject to disclosure to anyone other than the Board, its employees, and agents.

C. Peer Communication and Practice Monitoring.

27. Respondent shall promptly submit to the Board a written plan proposing how regular consultation regarding his practice shall be accomplished. This plan shall provide for regular communication and consultation as to Respondent's practice and professional involvements with a specifically identified practitioner (i.e., "Peer Consultant"), who shall be proposed by Respondent and who shall be subject to the written approval or disapproval of the Board. Such consultation shall initially take place at least weekly. After the passage of at least one year, Respondent may petition for modification of the provisions of this paragraph. The Board in its sole discretion may approve or disapprove such a petition. Respondent agrees that he shall

promptly provide copies of this Stipulation and Consent Order to any practitioner proposed for this purpose.

28. The plan referred to above shall provide for written quarterly reports to the Board by the approved practitioner. Such reports shall address the nature of Respondent's hours and workload, his practice activities, his functioning, and how consultation regarding Respondent's professional activities was carried out during the prior three month period. Such reports shall be in a manner and form to be determined by the Board. Respondent shall bear responsibility for making reasonable efforts to ensure that such reports are promptly provided to the Board. After the passage of at least one year, Respondent may petition for modification of the reporting provisions of this paragraph. The Board in its sole discretion may approve or disapprove such a petition.

D. Practice Site and Other Requirements.

29. Respondent agrees not to care for patients other than in affiliation with an institutional health care provider, such as a hospital. He agrees to practice medicine only in a structured practice setting,¹ subject to the express written approval or disapproval of any such practice site or sites by the Board of Medical Practice. Respondent expressly agrees he shall not treat patients outside the structured practice setting and that he shall not treat patients at his residence. Respondent agrees that he shall promptly provide copies of this Stipulation and Consent Order to any employer, partnership, provider, or institution involved in Respondent's practice of medicine.

30. Respondent agrees that he shall treat patients only as part of his employment (or formalized affiliation or association in practice) and his assigned duties at his identified practice

site(s) and shall treat patients only at that location and only in such other settings, including hospitals and clinics, as may be required by his employer and expressly approved by the Board. Respondent agrees that he shall not practice medicine outside the provisions or scope of such practice arrangement. After the passage of at least six months, Respondent may petition for modification of the provisions of this paragraph. The Board in its sole discretion may approve or disapprove such a petition.

31. The Board, in its sole discretion, may limit the average number of hours per week that Respondent may see or care for patients. The parties agree that Respondent shall initially be limited to an average of 30 hours of practice per week, including call, during any given month. The parties agree that Respondent shall adhere to this limitation for at least the first three months, following approval of this agreement by the Board. Thereafter, the Board in its sole discretion may approve or disapprove a petition from Respondent to increase the average number of hours per week that he may see or care for patients. Such action by the Board may be taken by notice of entry order.

32. The parties expressly agree that Respondent's continuing employment or formalized association with the structured practice setting, referred to in Paragraph 29, above, is a material term of this agreement. The parties agree that cessation of such employment or formalized association shall constitute a circumstance of non-compliance by Respondent with the terms and conditions of this agreement and shall require Respondent voluntarily and immediately to cease all practice activities. However, Respondent may propose a different structured practice setting as his place of employment. The Board, in its sole discretion, shall promptly consider and approve or disapprove any such proposal from Respondent.

1. A structured practice setting shall include, at a minimum, regular substantive interaction with peers and other colleagues involved in the care of patients during office hours. The Board in its sole discretion shall determine whether a proposed practice site shall be deemed a structured group practice setting.

33. Respondent acknowledges and agrees that should his practice site, if approved by the Board, be located outside the State of Vermont, his full compliance with all terms and conditions of this agreement shall nonetheless be required. Respondent agrees that if his practice site is located outside the State of Vermont, he shall provide the Vermont Board of Medical Practice at least 30 days notice of any intention on his part to practice medicine in the other State. Respondent agrees that the Vermont Board, in its sole discretion, may provide documentation regarding this matter to other State boards of medicine that may have occasion to review licensure actions relating to Respondent.

E. Terms as to Possible Cessation of Practice.

34. Respondent agrees that he shall promptly cease the practice of medicine should a treating physician so recommend to him. In this regard, Respondent agrees that his treating physician(s) shall be required to notify the Board immediately of any such recommendation discussed with Respondent. In this regard, a treating physician also shall notify the Board of Respondent's compliance or non-compliance with any such recommendation, if known. Respondent agrees that noncompliance by him with a treating physician's recommendation shall be grounds for summary suspension of his medical license by the Board.

35. Respondent agrees that upon any such recommendation, as described in Paragraph 34, above, he shall promptly cease and desist from any and all practice of medicine, including prescribing, in the State of Vermont or elsewhere until: (a) such time as it is deemed safe for him to return to the practice of medicine, such determination to be made by the Board, in its sole discretion; and (b) the Board approves any additional or revised conditions and requirements that shall regulate his future practice activities, care and additional treatment, and/or monitoring thereof by the Board; or (c) other order of the Board. Respondent agrees that the Board may seek such evaluation or assessment and records as it may deem necessary to effect the purposes of this

paragraph. He agrees to provide all cooperation necessary for this purpose, e.g., by executing waivers of confidentiality as to his medical records.

36. The Board agrees to promptly decide any petition from Respondent for: a) review of any recommendation made to Respondent by a practitioner that he temporarily cease the practice of medicine; or b) for Board approval of his return to practice after a temporary interruption of Respondent's practice of medicine, pursuant to Paragraph 35, above.

F. Other Matters.

37. Respondent agrees to accept and be bound by the terms and conditions of this agreement until such time as he may be expressly relieved of these or they are modified, in writing, by the Board. The parties agree that Respondent may apply for modification or relief from the terms and conditions of this agreement should the circumstances of Respondent's medical condition warrant. The Board agrees that this agreement may be modified, provided that the Board is satisfied, in its sole discretion, that amendment of this agreement is consistent with protection of the public health, safety, and welfare and Respondent's treatment and health. Respondent agrees that he shall not present, and the Board shall not consider, any such petition prior to the passage of at least two years from approval of this agreement, with the sole exception of provisions herein for which earlier modification may be provided. See, e.g., Paragraphs 23, 27, 28, and 30-32, above.

38. Respondent agrees that following approval of this agreement, this matter may be assigned to a standing investigative committee of the Board for routine compliance monitoring and that any further proceedings related to this matter may be heard and decided by the Board of Medical Practice, as composed of its regular members, appointed pursuant to 26 V.S.A. § 1351(a). Respondent expressly waives any requirement that this matter continue to be heard by *ad hoc* members pursuant to 26 V.S.A. § 1355(b).

39. Respondent agrees that all terms and conditions herein as to the disposition of this matter may be adopted as an enforceable order of the Board, pursuant to 3 V.S.A. § 809(d) and 26 V.S.A. § 1353(4) and other applicable authorities, and agrees to be bound by these until such time as he may be expressly relieved of these or they are modified, in writing, by the Board.

40. The parties concur that this agreement, as to terms and conditions upon Respondent's medical license, shall be a public document, shall be made part of Respondent's licensing file, and may be reported to other licensing authorities and/or entities including, but not limited to, the National Practitioner Data Bank and the Federation of State Medical Boards.

41. This Stipulation and Consent Order is subject to review and acceptance by the Vermont Board of Medical Practice and shall not become effective until presented to and approved by the Board. If the Board rejects any part of this agreement, the entire agreement shall be considered void. However, if this agreement is deemed acceptable, the parties request that the Board enter an order adopting the stipulated facts and/or conclusions and all terms and conditions of licensure set forth herein. Respondent agrees that the Board of Medical Practice shall retain jurisdiction in this matter and may enforce as necessary the terms and conditions herein, subject to the terms of this agreement and 26 V.S.A. §1354(25) or other statutory authority.

